

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)

Implementation of Section 309(j) of the)
Communications Act -- Competitive Bidding)

PP Docket No. 93-253

TO: Commercial Wireless Division
Wireless Telecommunications Bureau
Room 5202
STP 1700A1

RECEIVED

APR 6 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**REPLY OF THE MINORITY MEDIA AND
TELECOMMUNICATIONS COUNCIL TO BET HOLDINGS,
INC. OPPOSITION TO TELEPHONE ELECTRONICS
CORPORATION'S EMERGENCY PETITION FOR WAIVER**

The Minority Media and Telecommunications Council ("MMTC") respectfully submits this Reply to the April 3, 1995 Opposition of BET Holdings, Inc. ("BHI") to the March 28, 1995 "Emergency Petition for Waiver" filed by Telephone Electronics Corporation ("TEC").^{1/}

Cook Inlet Region, Inc. ("Cook Inlet") has filed an "Emergency Motion to Vacate Stay for Want of Article III Standing" in the D.C. Circuit. MMTC agrees with Cook Inlet and BHI that the stay should be vacated, owing to TEC's lack of standing. Under the DE rules, TEC would be unable to participate in the C Block auctions even if it were a minority or female owned company; thus, the minority and female incentives were not the cause of TEC's alleged injury.

However, regardless of whether the Commission awaits the Court's ruling on Cook Inlet's motion, it should approve the TEC settlement and move forward promptly with the C Block auction.

^{1/} MMTC, founded in 1986, is the association of attorneys, scholars, engineers and economists which assists the civil rights community in communications policy matters. The views stated herein are those of MMTC itself and are not necessarily the views of any particular member of MMTC or its Board.

Leave to file this pleading is respectfully requested in light of its brevity and the importance of the subject matter.

No. of Copies rec'd 0210
List A B C D E

TEC's modest waiver proposal should not open any floodgate of waiver requests, inasmuch as the waiver would be very narrowly tailored. Furthermore, few rural telcos possess the size and structural attributes which meet the burden for a grant of a waiver request such as TEC's.

BHI invites the Commission to "eliminate or equalize the bidding credits afforded to minority and women-owned entities and small businesses in the entrepreneurs' blocks" because of fear that persons unknown might raise objections at the petition to deny stage. See BHI Opposition at 7-8. MMTC has the greatest respect for BHI, a pioneering African American owned company which has contributed enormously to the industry and to the viewing public. But this time, BHI just has it wrong.

First, only Congress, which directed the Commission to create the bidding credits, can eliminate them. Great deference is owed to an act of Congress on a fundamental policy. If the Commission seeks Congressional reexamination of its policy, the C Block auction would be furthered delayed, placing participants in the auction at a severe competitive disadvantage because winners of the A and B Block auctions would have a tremendous headstart.

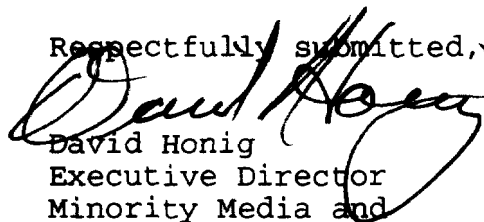
Second, since Congress created them, the bidding credits are subject to intermediate scrutiny. TEC's waiver and related bidding credits help make the case for the other Congressionally mandated credits for women (10%) and minorities (15). These bidding credits serve an important governmental interest and are substantially related to the attainment of that interest. See Fullilove v. Klutznick, 448 U.S. 448 (1980).

But third, and most important, the Commission's entirely justifiable and fair policy deserves a most resounding reaffirmation. If fear of an unknown foe were sufficient to bring about a retreat, we'd never have had a civil rights movement. Where would this nation be today if Little Rock Nine had turned back from Central High School because of fear that persons unknown would try to stop them?

If 400 years of American history teaches anything at all, it is that zealous opponents of minority advancement are never satisfied by a show of fear. Fear emboldens them!

Fortunately, minority entrepreneurs have bravely put their fortunes on the line, preparing to compete in the auction. They have always been well aware that at some point, someone could come forward to challenge the DE rules. But these minority entrepreneurs know that if they lose this opportunity, they'll be no worse off than they are now, for they will at least preserve a measure of self respect.

Respectfully submitted,\



David Honig
Executive Director
Minority Media and
Telecommunications Council
3636 16th Street N.W.
Suite AG-58
Washington, D.C. 20010
(202) 332-0500

April 6, 1995